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 United States of America

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Criminal Case No. 07CR3358-H
)	
Plaintiff,)	DATE: January 28, 2008
)	TIME: 2:00 p.m.
v.)	
)	
FRANK MOLINA,)	UNITED STATES' NOTICE OF MOTION
)	AND MOTION FOR RECIPROCAL
Defendant.)	DISCOVERY
)	
)	
)	
)	

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and hereby files its Motion for Reciprocal Discovery in the above-referenced case. Said motion is based upon the files and records of this case together with the attached memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On November 13, 2007, defendant Frank Molina was arraigned on a one-count Information
5 charging him with importation of 66.90 kilograms of marijuana, in violation of Title 21, United States
6 Code, Sections 952 and 960. Defendant entered a plea of not guilty.

7 Prior to his change of plea hearing, defendant elected not to plead guilty. On December 12,
8 2007, a federal grand jury in the Southern District of California returned a two-count Indictment
9 charging defendant with importation of marijuana and possession of marijuana with intent to distribute,
10 in violation of Title 21, United States Code, Sections 841(a)(1), 952 and 960. Defendant was arraigned
11 on the Indictment on December 13, 2007 and entered a plea of not guilty.

12 **II**

13 **STATEMENT OF FACTS**

14 **A. Defendant's Apprehension**

15 On October 15, 2007, at approximately 4:15 a.m., defendant attempted to enter the United States
16 from the Republic of Mexico at the San Ysidro Port of Entry as the driver and sole occupant of Hyundai
17 Sonata. Defendant provided the primary inspection officer with a negative customs declaration and
18 informed the officer that the vehicle belonged to his wife but that the registration was not in her name.
19 Defendant further represented that his wife had owned the vehicle for two months.

20 The primary officer inspected defendant's vehicle and discovered a non-factory compartment
21 under the rear seat. The officer referred defendant and the vehicle to secondary inspection for a seven-
22 point inspection.

23 The secondary officer removed the vehicle's rear seat which revealed a non-factory compartment
24 underneath containing 11 cellophane wrapped packages. Further inspection revealed a second non-
25 factory compartment on the front floorboard containing 25 cellophane wrapped packages. A field test
26 on one of the packages obtained a positive reaction for marijuana. The total weight of the 36 packages
27 was 66.90 kilograms (147.18 pounds).

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1 **B. Defendant's Post-Arrest Statement**

2 At approximately 8:59 a.m. on October 15, 2007, Immigration and Customs Enforcement agents
3 informed defendant that he was under arrest and provided him with Miranda warnings. Defendant
4 agreed to answer questions. According to defendant, he knew there was marijuana in the vehicle. In
5 exchange for smuggling the marijuana into the United States, defendant was to be paid \$1000 and
6 would keep the vehicle. Defendant stated that he previously had smuggled marijuana into the United
7 States in the same vehicle and had been paid \$600 on that occasion.

8 **II**

9 **MOTION FOR RECIPROCAL DISCOVERY**

10 The Government has and will continue to fully comply with its discovery obligations. To
11 date, the Government has provided defendant with 59 pages of discovery and one DVD, including
12 reports of his arrest, his rap sheet, photographs of the vehicle and marijuana and copies of documents
13 found on defendant's person and in the vehicle.

14 The Government moves the Court to order defendant to provide all reciprocal discovery to which
15 the Government is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2. Specifically,
16 Rule 16(b)(1) requires defendant to disclose to the Government all exhibits, documents and reports of
17 testing or examination which defendant intends to use in his case-in-chief at trial and a written summary
18 of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at
19 trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

20 **III**

21 **CONCLUSION**

22 For the foregoing reasons, the Government respectfully requests that the Court grant its motion.

23
24 DATED: January 16, 2008.

Respectfully submitted,

25 Karen P. Hewitt
26 United States Attorney

27 s/ David D. Leshner
28 DAVID D. LESHNER
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 07CR3558-H
)	
Plaintiff,)	
)	
v.)	
)	CERTIFICATE OF SERVICE
FRANK MOLINA,)	
)	
Defendant.)	

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES'**
NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY on the following
parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System,
which electronically notifies them.

Jodi Thorp, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 16, 2008.

/s/ David D. Leshner
DAVID D. LESHNER